BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	
Pursuant to Section 271 of the	)	CC Docket No. 01-277
Telecommunications Act of 1996	)	
To Provide In-Region, InterLATA Services	)	
In Georgia and Louisiana	)	

REPLY DECLARATION OF CHERYL BURSH
AND SHARON NORRIS
<u>ON BEHALF OF AT&T CORP.</u>

November 13, 2001

Table of Contents

Pages

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	
Pursuant to Section 271 of the	)	CC Docket No. 01-277
Telecommunications Act of 1996	)	
To Provide In-Region, InterLATA Services	)	
In Georgia and Louisiana	)	

REPLY DECLARATION OF CHERYL BURSH
AND SHARON NORRIS
ON BEHALF OF AT&T CORP.

1. My name is Cheryl Bursh. I am currently employed by AT&T Corp. as a District Manager. I am the same Cheryl Bursh who, together with Sharon Norris, submitted a declaration in this proceeding on October 19, 2001 (hereinafter referred to as "Bursh/Norris Decl." or "initial declaration"). My educational background and work experience are described in our initial declaration.

2. My name is Sharon Norris. I am a consultant with SEN Consulting Inc. My business address is P.O. Box 658, Loganville, Georgia 30152. I am the same Sharon Norris who, together with Ms. Bursh, submitted a declaration in this proceeding on October 19, 2001. My educational background and work experience are described in our initial declaration.

I. PURPOSE AND SUMMARY OF DECLARATION

3. The purpose of this Reply declaration is to respond to the comments filed in this proceeding, including the evaluations submitted in this proceeding by the Department of Justice ("DOJ"), the Louisiana Public Service Commission ("LPSC") and the Georgia Public Service Commission ("GPSC") regarding BellSouth's authority to provide in-region interLATA

service in Georgia and Louisiana. Specifically, this Reply Affidavit addresses the comments filed in this proceeding regarding: the deficiencies in the performance measurements on which BellSouth relies; the unreliability of BellSouth's performance data, including the data integrity problems that have been uncovered during the metrics phases of the Third Party Tests of BellSouth's OSS in Georgia and Florida; BellSouth's performance data that purportedly show that it has satisfied its statutory obligations; and BellSouth's performance remedy plans.

4. The comments confirm that, despite findings of the GPSC and LPSC to the contrary: (1) the performance measurements on which BellSouth relies do not accurately capture actual performance; (2) BellSouth's data collection and performance reporting measures are so riddled with error that its performance data are inadequate to demonstrate its present compliance with the checklist; (3) the data integrity problems that have been uncovered to date, including those revealed during the metrics phases of the Third Party Test of BellSouth's OSS in Georgia and in Florida, demonstrate that these issues must be resolved before Section 271 entry; (4) BellSouth refuses to provide CLECs the raw data to which they are entitled under the GPSC's orders;[1] (5) even BellSouth's incomplete and inadequate data, coupled with the CLECs' data, show that BellSouth is not meeting its statutory obligations; and (6) BellSouth's performance remedy plans contain fundamental flaws that prevent them from serving as effective deterrents against future backsliding.

5. The evaluations of the GPSC and LPSC fail to address the critical issues that CLECs have raised regarding these matters, accept at face value BellSouth's explanations and rationalizations, or diminish the significance of these issues. Additionally, the evaluations of

[1] BellSouth claims that it provides raw data to CLECs. However, what BellSouth provides are actually data that have been processed. Indeed, BellSouth's early stage data are truly its raw data. BellSouth's PMAP data are manipulated data that BellSouth misleadingly refers to as "raw data." AT&T's references to raw data in this Reply Declaration and in our initial declaration refer to BellSouth's early stage data.

both Commissions rest in large measure on hopeful expectations that BellSouth will fulfill its promises to take corrective action, or that BellSouth's performance remedy plans will provide sufficient incentives to assure that BellSouth will resolve any deficiencies in its performance.

6. The Georgia and Louisiana Commissions' reliance on such promises is contrary to the explicit terms of the Telecommunications Act, as well as the Commission's repeated admonitions that "promises of future performance have no probative value in demonstrating present compliance." *Michigan 271* Order ¶ 55.[2] Moreover, BellSouth's promises to take remedial steps to cure any existing deficiencies in its performance, the PSCs' hopeful expectations that BellSouth will improve its performance in the future, and the PSCs' belief that the remedy plans will somehow induce BellSouth to improve its performance simply highlight the fact that BellSouth's application is premature. On the basis of this record, BellSouth's application should be rejected. BellSouth's performance reporting and remedy plans fail to demonstrate that BellSouth is presently satisfying its Section 271 obligations, or that it will satisfy such obligations in the wake of Section 271 relief. Approving BellSouth's application at this time would only serve to lower the compliance bar and reward BellSouth for failing to comply with its statutory obligations.

II. BELLSOUTH'S PERFORMANCE DATA ARE FUNDAMENTALLY FLAWED.

A. BellSouth's Performance Measures are Unreliable.

7. The comments of the DOJ and others confirm that many of the metrics upon which BellSouth relies to support its application are "unreliable in several significant respects" and "should be revised to provide regulators and competitors with meaningful performance data." DOJ Eval. at 2, 35. For example, the comments confirm that BellSouth's

---

[2] Memorandum and Order, *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997) ("*Michigan 271 Order*").

Order Completion Interval measure is unreliable because it "does not capture the service provisioning interval from when a CLEC sends its order to BellSouth to when an order is actually provisioned." DOJ Eval. at 37, n. 131. *See also* Bursh/Norris Decl. ¶ 75; WorldCom at 47. Additionally, the comments show that a number of BellSouth's other measurements do not accurately capture BellSouth's performance, including its metrics on trunk blocking, held order intervals, OSS interface availability, flow-through, and hot cuts. DOJ Eval. at 2, 36-37; Bursh/ Norris Decl. ¶¶ 71-75; McConnell/Berger Decl. ¶¶ 13-27; Berger Decl., ¶¶ 62-71. Because many of the measurements on which BellSouth relies are ill-defined or inadequate to measure actual performance, they cannot reasonably serve as probative evidence that BellSouth has satisfied its statutory obligations.

8. In finding that BellSouth's performance data prove that it has satisfied its Section 271 obligations, the LPSC either dismisses the CLECs' arguments regarding defects in BellSouth's measures or fails to consider the inherent deficiencies in BellSouth's measures that render them incapable of reflecting actual performance.[3] In contrast, although the GPSC, in its evaluation, makes references to the CLECs' arguments regarding the unreliability of BellSouth's measures, it asserts that any issues regarding the defects in BellSouth's measurements are not properly the subject of the present proceeding. GPSC at 133. The GPSC's position is incorrect. Where, as here, BellSouth claims that its Service Quality Measurements "provide this Commission with an effective means to evaluate the quality and timeliness of the access provided by BellSouth to CLECs," and that its performance data demonstrate checklist

[3] *See, e.g*, LPSC at 59 (noting that AT&T "voiced concern regarding the hot cut measures adopted by the Commission," but stating, without any further analysis, that the "LPSC believes that the hot cut measures are appropriate"); *id.* at 17 (stating that BellSouth met the trunk blocking benchmark, but failing to address the unreliability of the trunk blocking measure itself); *id.* at 46 (noting that BellSouth met the order completion interval for UNE orders during certain months, but failing to recognize that the measure itself fails to capture the interval between the receipt of a valid LSR and issuance of the FOC).

compliance, an analysis of the reliability of the performance measures on which BellSouth relies is critical in assessing BellSouth's claims of statutory compliance. GPSC at 65-66 (citation omitted). As the Department of Justice correctly observes "the establishment of reliable performance benchmarks . . . before the FCC approves an application increases the probability that regulators will be able to ensure that the RBOC continues to provide services at levels such that CLECs will have a meaningful opportunity to compete." DOJ Eval. at 31 (footnote omitted) (emphasis added).

B. BellSouth Has Improperly Implemented Performance Measures.

9. The comments confirm that BellSouth's performance data provide no sound basis for concluding that BellSouth has demonstrated that it has provided nondiscriminatory access to its OSS. As the DOJ correctly notes, "[a]n array of CLECs have lodged credible complaints about the sufficiency of BellSouth's operations support systems ("OSS") and neither the reported performance data nor the results of the third party testing relied on in this application are sufficient to determine that these complaints are unfounded." DOJ Eval. at 2. Indeed, substantial problems with BellSouth's data have been duly noted by the Department of Justice, KPMG during third-party testing in Georgia and Florida, and even "BellSouth itself." DOJ Eval. at 32 (footnote omitted).

1. BellSouth Has Unilaterally Altered Performance Measures and Excluded Transactions.

10. In our initial declaration, we explained that BellSouth's performance data are inaccurate and unreliable because BellSouth has unilaterally modified performance measures or excluded orders from certain measures when such exclusions were never authorized by the GPSC. Bursh/Norris Decl. ¶¶ 36-69, 110-111. BellSouth's unilateral redefinitions of the performance measures necessarily spawn inaccuracies in its performance results. BellSouth's

manipulations of BellSouth's performance measures have resulted in: (1) the exclusion of LSRs submitted in one month and rejected in another in its reject intervals; (2) the exclusion of non-business hours when calculating FOC and rejection notice timeliness for partially-mechanized orders; (3) inaccurate jeopardy notice intervals; (4) the exclusion of LSRs that BellSouth unilaterally classifies as projects when calculating its rejection and FOC timeliness; (5) the exclusion of installation appointment misses occurring after the original missed appointment; (6) the exclusion of rural orders when calculating the held order interval; (7) the exclusion of data relating to the timeliness of LERG updates; (8) distortions in BellSouth's reported change management notice timeliness; (9) the exclusion of directory listings orders when calculating missed installation appointments, completion intervals, and rejection and FOC timeliness; and (10) the exclusion of completion notices when an order is completed in one month and the completion notice is issued in another. *Id*.

11. The LPSC's and GPSC's findings that BellSouth's data are "reported in a consistent and reliable manner" and show checklist compliance are incorrect. GPSC at 129. *See also* LPSC at 30. Indeed, the LPSC's evaluation does not even analyze the fundamental flaws in BellSouth's measures that render them incapable of measuring BellSouth's performance accurately.[4] In contrast, the GPSC dismisses AT&T's arguments regarding BellSouth's unauthorized changes to the metrics by asserting that such matters are not properly the subject of a Section 271 proceeding. GPSC at 133. Indeed, the GPSC states that such matters should only

---

[4] *See* LPSC at 47 (noting that BellSouth meets the benchmarks in April and May for missed appointments for UNE orders but failing to address BellSouth's failure to capture missed appointments occurring after the original missed appointment; *id.* at 41 (referring to BellSouth's FOC timeliness performance, but failing to address BellSouth's exclusion of Directory Listings orders and exclusion of non-business hours for partially mechanized orders), *id.* at 41-42 (referring to BellSouth's rejection intervals, but failing to address BellSouth's exclusion of LSRs submitted in one month and rejected or exclusion of non-business hours for partially mechanized LSRs, or exclusion of orders that BellSouth classifies as projects); *id.* at 45-46 (referring to BellSouth's average completion notice interval, but failing to address BellSouth's exclusion of completion notices when an order is completed in one month and the completion notice is issued in another).

be considered during the GPSC's "annual review of the SQM and the performance plan in Docket No. 7892-U." *Id*. However, BellSouth is relying upon its performance measures and data to establish checklist compliance, BellSouth's improper implementation of the measures, including its unilateral revisions to the business rules governing such measures, is highly probative in determining whether BellSouth's performance data can properly be viewed as accurate and reliable evidence of statutory compliance.

12. Clearly, BellSouth's performance data cannot serve as probative evidence of BellSouth's actual performance if BellSouth has improperly implemented measures and excluded data from its metrics calculations. Indeed, without complete and accurate performance results that capture all transactions, neither the Commission nor the CLECs can properly gauge BellSouth's performance.

2. BellSouth's Data Collection and Performance Reporting Processes are Plagued With Errors.

13. The comments confirm that the irreconcilable inconsistencies and discrepancies in BellSouth's performance reports illustrate that its performance data are untrustworthy. Bursh/Norris Initial Decl. ¶¶ 77-86. Indeed, the record evidence demonstrates that BellSouth's error-ridden data collection and reporting processes have generated myriad inaccuracies in performance results. DOJ Eval. at 32; LPSC at 42. These errors have resulted in, *inter alia*: the exclusion of xDSL orders from and BellSouth's overstatement of flow-through rates;[5] the exclusion of loop orders from order completion interval results;[6] the use of incorrect "timestamps" when measuring performance intervals;[7] the improper implementation of the

[5] DOJ Eval. at 15, 32 n. 110; Bursh/Norris Decl. ¶ 29; WorldCom at 18; Birch at 10-12.

[6] Covad at 35-39.

[7] DOJ Eval. at 33 (footnote omitted).

business rules governing jeopardy notices;[8] the exclusion of transactions for facilities-based carriers;[9] inaccurate trouble reporting results;[10] inaccurate LNP data;[11] the exclusion of auto-clarifications from the FOC & Reject Response Completeness measure;[12] the omission of retail data in calculating trouble report rates for xDSL, and line-sharing,[13] erroneous rejection notices;[14] and missing FOCs, rejection notices, jeopardy notices and completion notices.[15]

14. Both the GPSC and LPSC flatly reject AT&T's arguments regarding the unreliability of BellSouth's performance data. In doing so, the GPSC and LPSC both accept, at face value, the various explanations and rationalizations that BellSouth proffered during state proceedings. In this regard, the LPSC's discussion of the substantial data integrity issues that AT&T raised is confined to two paragraphs in its evaluation. Referencing only the Varner (LPSC) Affidavit, ¶¶ 25-85, the LPSC categorically rejects AT&T's arguments regarding the unreliability of BellSouth's data, stating that BellSouth "presented testimony to refute each of the allegations made by AT&T." LPSC at 30. The mere fact that the LPSC broadly dismisses all of AT&T's arguments by simply citing 60 paragraphs from Mr. Varner's Affidavit, without explanation, demonstrates the paucity of the LPSC's analysis on these critical issues.

---

[8] Bursh/Norris Decl. ¶¶ 45-49. *See also* DOJ Eval. at 37 n.129.

[9] NuVox at 4.

[10] NuVox at 9-10.

[11] Bursh/Norris Decl. ¶ 86.

[12] LPSC at 42.

[13] DOJ Eval. at 33, n. 110.

[14] DOC Eval. at 19; WorldCom at 16-17.

[15] Bursh/Norris Decl. ¶¶ 76-82; Birch at 22-23 (noting that none of Birch's orders from May through August received jeopardy notices). Sprint at 19 (noting that BellSouth's performance in Louisiana in providing complete FOCs and rejection notices is "particularly troubling"); WorldCom at 8-12 (noting that BellSouth has substantial problems in Georgia with missing FOCs, completion notices, and rejection notices).

15. Similarly, the GPSC "concludes that BellSouth has provided 'reasonable assurance' that its performance data are reported 'in a consistent and reliable manner.'" GPSC at 129. Notably, the GPSC states that the concerns raised by AT&T "about the 'integrity' of BellSouth's performance data appear to be attributable to an apparent lack of familiarity with BellSouth's SQM." GPSC at 132. In reaching this finding, the GPSC relies solely on the Performance Reply Affidavit submitted by BellSouth's witness, William Stacy, as evidence. However, Mr. Stacy's testimony is belied by the SQM that the GPSC approved, BellSouth's admissions in correspondence to AT&T, and BellSouth's own performance reports. Indeed, as we explained in our initial declaration, BellSouth's performance reports do not reflect BellSouth's actual performance, its performance data are missing significant numbers of CLEC transactions, and its performance reports are internally inconsistent.

16. **Missing Completion Notices.** During proceedings before the GPSC and LPSC, AT&T argued that BellSouth's performance data and associated reports omitted CLEC-specific data. Thus, for example, AT&T pointed out that BellSouth improperly excluded partially-mechanized orders from its Average Completion Notice Interval reports and from the PMAP raw data during the first quarter of 2001.[16] The evaluations of the GPSC and LPSC reject AT&T's arguments. GPSC at 132-133; LPSC at 30. The sole basis for the PSCs' findings is the testimony presented in Georgia by BellSouth's witnesses Mr. Stacy and Mr. Varner. Both Mr. Stacy and Mr. Varner provided the following testimony is response to AT&T's allegations:[17]

> Ms. Norris alleges that BellSouth excludes partially mechanized orders from the Average Completion Notice Interval (ACNI)

[16] Norris (GPSC) Affidavit, filed May 31, 2001 (GPSC Docket No. 6863-U) ¶ 40.

[17] Performance Measurements Reply Affidavit of William N. Stacy, filed July 16, 2001 (GPSC Docket No. 6863-U) ¶ 54 ("Stacy Performance Reply Aff."); Reply Affidavit of Alphonso J. Varner, filed June 25, 2001 (LPSC Docket No. U-22252-E) ¶ 63 ("Varner (LPSC) Reply Aff.").

> report and from PMAP raw data, thus preventing AT&T from measuring BellSouth's level of performance in providing Completion Notices for partially mechanized orders. When the errors in Ms. Norris' affidavit are corrected, the basis for the conclusion is eliminated. As Ms. Norris is fully aware, partially Mechanized orders are included as part of mechanized orders for provisioning measurements. ACNI is a provisioning measure, consequently no distinction is made between fully mechanized and partially mechanized orders. Therefore, contrary to her allegation that BellSouth fails to measure 35% of electronic completion notices, BellSouth is actually measuring 100% of the electronic completion notices.

17. Thus, Mr. Stacy's testimony (filed in July) and Mr. Varner's testimony (filed in June) stated unequivocally that all partially-mechanized orders had been captured in BellSouth's performance reports during the first quarter of 2001. Accepting Mr. Stacy's explanation at face value, the GPSC concludes that BellSouth did in fact provide all partially-mechanized orders in its Average Completion Interval reports (GPSC at 132-133):

> AT&T's claim that BellSouth improperly excludes partially mechanized orders from the Average Completion Notice Intervals ignores that, because this is a provisioning measure, no distinction is made in the method by which the order is placed. As a result, the partially mechanized orders and fully mechanized orders are included together, and BellSouth states that it is measuring 100% of the electronic completion notices, not 35% as alleged by AT&T.

Similarly, the LPSC, referencing the Reply Affidavit of BellSouth's witness, Mr. Varner, states that BellSouth successfully refuted AT&T's allegations on all data integrity issues. *See* LPSC at 30.

18. However, the reliance of the GPSC and LPSC on the testimony of Messrs. Varner and Stacy is misplaced. Significantly, both Commissions ignore that BellSouth essentially admitted in a letter to AT&T that it *had excluded* partially mechanized completion notices from its completion notice reports during the first quarter of 2001, and that it *would*

include these status notices on June 21, 2001 when it reported its May data.[18] Further, the reports of the GPSC and LPSC ignore that the approved business rules governing the completion notice measures do not authorize the exclusion of partially mechanized orders.[19] *See* SQM May 2000 (P-5) (Att. 1); GPSC January 16, 2001 Order at 5 (Att. 2).

19. Even after BellSouth started capturing partially mechanized orders in its completion notice data, AT&T discovered other discrepancies in BellSouth's data and reports indicating that BellSouth was omitting completion notice data. During proceedings before the GPSC and LPSC, AT&T pointed out that the number of completed orders identified in BellSouth's Missed Appointments data did not match the number of completed orders in the Average Completion Notice Interval raw data file. AT&T's examination of BellSouth's data revealed that BellSouth was not returning a substantial number of completion notices or that its performance reports failed to capture its performance in this area. Bursh/Norris Decl. ¶¶76-77.

20. In their findings, both the LPSC and GPSC accept BellSouth's explanation regarding the reasons for these discrepancies. In this regard, BellSouth's witnesses Messrs. Varner and Stacy contended that: (1) the Missed Installation (MIA) metric included all completed orders, including fully and partially-mechanized and non-mechanized orders; (2) non-

---

[18] AT&T presented evidence of this admission by BellSouth in the Supplemental Affidavit of Sharon Norris filed before the GPSC on July 16, 2001. *See* SEN-10, Letter from KC Timmons to Jan Flint dated June 28, 2001 at 2 (referring to BellSouth's response dated June 21, 2001 and confirming that BellSouth stated that it would start capturing partially mechanized orders on June 21, 2001 for May performance data). *See* letter from Jan Flint to K. C. Timmons dated June 21, 2001 at 2 (Att. 3); Norris (LPSC) Aff., filed July 23, 2001 (SEN-10).

[19] The LPSC also ignores the internal inconsistencies in the testimony that Mr. Varner submitted. In his affidavit filed on June 25, Mr. Varner insisted that BellSouth's performance data reports captured partially mechanized completion notices and claimed that such notices were included, for example, in BellSouth's March performance report. Varner (LPSC) Aff. filed June 25, 2001, ¶ 63. However, in his affidavit filed on August 20, 2001 (¶ 56), Mr. Varner stated that BellSouth *would not start capturing* partially mechanized completion notices until June data were provided. Both versions of the facts (that partially mechanized completion notices were in fact captured in BellSouth's March report and that such notices would not be included until June data) are contradicted by BellSouth's letter to AT&T dated June 21, 2001 which states that partially mechanized completion notices would not be included in BellSouth's reports until *May* data. *See* Att. 3.

mechanized orders do not receive a completion notice in the Average Completion Notice Interval (ACNI) measures; and, (3) non-mechanized orders are not counted under the ACNI measure.[20] However, BellSouth's explanation is simply wrong. The particular OCN to which AT&T referred involved orders for AT&T's UNE-P trial that only used EDI and LENs. In fact, because non-mechanized orders were not submitted by AT&T during this trial, BellSouth's explanation was and is erroneous. Furthermore, our initial declaration included other examples from BellSouth's June and July 2001 MSS showing that BellSouth's reports on missed appointments and completion notices continue to show discrepancies with respect to the volumes identified in these reports for non-dispatched loop and port combination orders. Bursh/Norris ¶¶ 76-68. These discrepancies further illustrate that BellSouth's data cannot be trusted.

21. **<u>LSR Volumes</u>**. Similarly, as we pointed out in our initial declaration, the unreliability of BellSouth's performance data is demonstrated by other inconsistencies in BellSouth's performance reports that are based upon a common set of data. For example, BellSouth's business rules indicate that, for any given OCN, the volumes of LSRs for fully mechanized rejections in the Reject Interval Report should match the number of Auto Clarifications in BellSouth's Percent Flow-Through Service Requests Report. Bursh/Norris Decl. ¶ 83, n. 43. However, there are significant differences in the volumes reported by BellSouth in these two reports.

22. Both the GPSC and LPSC dismiss AT&T's arguments regarding these irreconcilable discrepancies in BellSouth's performance results. The findings of the Georgia and Louisiana Commissions rest solely on the affidavits filed by BellSouth's witnesses, Messrs. Stacy and Varner. Thus, the GPSC rejects AT&T's arguments, stating that "different business

---

[20] Stacy Performance Reply Aff. ¶¶ 44-45; Varner (LPSC) Reply Aff. ¶¶ 50-51.

rules and classification criteria are used to process these two reports, which explains the differences in their results." GPSC at 132. Notably, the sole evidence that the GPSC relied on is the Stacy Performance Reply Affidavit filed before the GPSC. Similarly, in rejecting all of AT&T's arguments on data integrity, the LPSC cites the testimony of BellSouth's witness, Mr. Varner, including those portions of Mr. Varner's affidavit that addressed AT&T's arguments regarding the discrepancies between BellSouth's Reject Interval and Flow-Through Service Requests Reports. LPSC at 30.

23. In addressing AT&T's arguments, both Mr. Stacy and Mr. Varner testified that the purported discrepancies were attributable to differences in the business rules and classification criteria governing the two reports, as well as the inclusion of test orders for the TAG interface:

> First, while the Reject Interval and the Flow-through reports use the same source data, different business rules and classification criteria are used to process some of the results. In this case, 9 LSRs were included in the Reject Interval report under Partially Mechanical rejects, but because of classification differences relating to the processing of the LSRs, these orders appear in the Total Manual Fallout category of the Flow-through Report.
>
> The second reason also has to do with differences in business rules. In this case, 12 LSRs were auto-clarified, then claimed by a service representative, causing them to be classified as partially mechanized and included in the count of Partially Mechanized Rejects. In the Flow-through report, they are included in the Auto Clarification category because they are auto-clarified, and do not appear in the CLEC-Caused Fallout Category.
>
> The last reason for the difference is that 4 LSRs, supporting AT&T feature testing, were submitted via the TAG interface. These orders are present in both the Reject Interval and Flow Through reports. However, because BellSouth did not provide the appropriate key for AT&T to identify its TAG orders on the Flow Through Reports, Ms. Norris could not identify the orders.[21]

[21] Stacy Performance Measurements Reply Aff. ¶¶ 33-35; Varner (LPSC) Reply Aff. ¶¶ 39-40.

24. The testimony of BellSouth's witnesses cannot withstand analysis. BellSouth's Georgia SQMs *do not* contain business rules and classification criteria that would explain these discrepancies in BellSouth's data. In fact, BellSouth's SQMs support AT&T's position. Under the SQM business rules for BellSouth's Reject Interval measure (O-8), "Auto Clarifications are considered in the Fully Mechanized Category."[22] In addition, BellSouth's Percent Flow-Through Service Request (Detail) Measure (O-4) Report includes a separate count of the "[n]umber of auto clarifications returned to CLECs."[23] Moreover, the business rules for the Reject Interval and Flow Through Measures *do not* state that any different classification criteria are used in reporting the fully mechanized rejections and auto clarifications in both reports.

25. In addition, although BellSouth claims that some LSRs that are auto-clarified subsequently fall out for manual processing, Exhibit 62 attached to Mr. Stacy's Affidavit in this proceeding shows that auto-clarifications are returned *automatically* to the CLECs and are *not* subject to manual processing. In all events, even assuming *arguendo* that some LSRs that are auto-clarified do, in fact, fall out for manual handling, then BellSouth's flow-through reports are erroneous since BellSouth classifies such LSRs as auto clarifications. Furthermore, although BellSouth claims that the discrepancies are due, in part, to its inclusion of orders that were tested using the TAG interface, the reality is that: AT&T does not use TAG for ordering; AT&T has not requested that BellSouth test TAG on its behalf; and it is inappropriate for BellSouth to include test orders in its reported commercial data.

---

[22] Varner GA Aff., Ex. PM-1 at 2-22.

[23] Varner GA Aff., PM-1 at 2-9.

26. Similarly, during proceedings before the LPSC and GPSC, AT&T identified the irreconcilable discrepancies between the number of orders falling out for manual processing in BellSouth's detailed Flow-Through Error Analysis Report and BellSouth's Aggregate Flow-Through Report. In dismissing AT&T's arguments, the GPSC essentially accepts BellSouth's explanation that the discrepancies "are a function of minor inconsistencies between the measures and the limited purpose for which the detailed error flow through analysis was prepared." GPSC at 134. The only evidence the GPSC cites for this finding is the Stacy Performance Reply Affidavit ¶ 36. *Id.* Similarly, the LPSC, in rejecting all of AT&T's data integrity arguments, references the testimony of BellSouth's witness Mr. Varner.

27. Both Mr. Stacy and Mr. Varner provided the following explanation regarding the discrepancies that AT&T identified between the volumes of orders identified in BellSouth's Aggregate Flow-Through Report and in BellSouth's detailed Flow-Through Error Analysis Report:

> [T]here is a legitimate reason why the BellSouth fallout volume in the Flow-through Error Analysis report does not match the volume of errors in the Flow-through report. The purpose of the Flow-through Error Analysis report, as its name implies, is to provide CLECs with examples of the most common reasons why orders fall out so that they can eliminate or minimize errors going forward. The analysis report is meant to reflect a significant percentage of relevant error codes, but does not provide a full accounting of BellSouth-caused errors. Thus, the report is truncated and submitted in a more summary fashion. By contrast, the Flow-Through report reflects the comprehensive volume of errors.[24]

Again, BellSouth's testimony is wrong.

28. First, the discrepancies discovered by AT&T are *not* "minor inconsistencies" as the GPSC states. Indeed, in AT&T's testimony before the GPSC, AT&T

[24] Stacy Performance Measurements Reply Aff. ¶ 36; Varner (LPSC) Reply Aff. ¶ 42.

noted that BellSouth's "BST caused fallout" volumes totaled *26,003* LSRs. In contrast, BellSouth reported in its related "Flow-Through Error Analysis" report that the total number of errors committed by BellSouth in March equaled *15,985* errors. BellSouth's numbers could not be accurate. Indeed, an LSR can have more than one error, but the number of orders cannot be greater than the total number of errors. However, in BellSouth's reports, the number of LSRs with errors substantially exceed the number of errors reported by BellSouth. Additionally, our initial declaration explained that BellSouth's July 2001 reports contained similar discrepancies. Bursh/Norris Decl. ¶ 83 (noting that BellSouth reported that its "BST caused fallout" volumes totaled 31,931 orders, but reported 21,010 errors in its "Flow-Through Error Analysis" report).

29. BellSouth's explanation for these discrepancies cannot withstand analysis. BellSouth contends that the different volumes in its reports are due to the fact that BellSouth's Flow-Through Error Analysis report is truncated and includes *only the most common* errors. BellSouth's explanation is belied by the business rules governing these measures, as well as BellSouth's own performance reports.

30. BellSouth's Flow-Through Error Analysis Measure (O-5) explicitly states that BellSouth is required to provide "[a]n analysis of *each* error type (by error code) that was experienced by the LSRs that did not flow through or reached a status for a FOC to be issued."[25] Further, according to BellSouth's own SQM, BellSouth's report is structured "in descending order by count of *each* error code." *Id.* (emphasis added). Additionally, BellSouth's own SQM business rules state that BellSouth must retain data reflecting the total number of errors by *each* error type. *Id.* Thus, the SQM business rules directly contradict BellSouth's assertion that *only the most common errors* are reported in BellSouth's Flow-Through Error Analysis Report.

[25] Varner GA Aff., Ex. PM-1 at 2-11 (emphasis added).

31. Similarly, in proceedings before the GPSC, AT&T pointed out that there were discrepancies between the volumes of LSRs that BellSouth reported in its Flow-Through Report and the LSRs that were reported in BellSouth's % Rejected Mechanized Report in PMAP. Both the LPSC and GPSC accept the explanations that BellSouth's witnesses Mr. Stacy and Mr. Varner proffered regarding the reasons for these discrepancies. *See* GPSC at 134 (referring to Stacy Performance Reply Aff.); LPSC at 30 (rejecting all of AT&T's data integrity arguments and referencing Varner (GPSC) Aff.).

32. Mr. Stacy and Mr. Varner testified that the LSR volumes in the two reports did not match because:[26]

> The % Reject from PMAP does not include LSRs identified as REQTYP 'JB' — Directory Listings orders in the % Rejected Mechanized measure. REQTYP 'JB' identifies a Directory Listing LSR. REQTYP 'JB' was not included in the SQM disaggregate according to the Georgia Order, Docket No. 7892-U and BellSouth did not disaggregate this data into a report.

See Stacy Performance Reply Aff., ¶ 38; Varner (LPSC) Reply Aff. ¶ 44. However, BellSouth's explanation is flawed.

33. BellSouth's claim that it was somehow justified in excluding LSRs identified as REQTYP 'JB'-Listings order because the GPSC did not order BellSouth to disaggregate and separately report this category of orders is nonsensical. No REQTYPs were listed as a level of disaggregation in the GPSC's Order in Docket No. 7892. Further, under the SQM business rules, directory listing orders are not listed as orders that are properly excluded from the % Reject Report.[27] Indeed, as we noted in our initial declaration, BellSouth's unilateral

[26] BellSouth's witnesses also testified that the discrepancies were attributable to the inclusion of test LSRs submitted by BellSouth through the TAG interface. Stacy Performance Reply Aff. ¶ 39; Varner (PSC) Reply Aff. ¶ 45. However, AT&T does not use TAG for ordering and never requested that BellSouth test TAG. And it is inappropriate for BellSouth to include test orders in its production results.

[27] Bursh/Norris Decl. ¶ 63.

exclusion of directory listings orders is impermissible under the business rules approved by the GPSC. Bursh/Norris Decl. ¶¶ 61-63. In fact, BellSouth's exclusion of Directory Listing orders is the subject of a data exception integrity exception in the Florida OSS test (Exception 114).

34. In Exception 114, KPMG reported that BellSouth inappropriately excluded over 6,000 fully mechanized orders and over 1,500 partially mechanized orders from its calculations on firm order confirmation timeliness. BellSouth recently responded to Exception 114 by *admitting* that 6,023 fully mechanized Directory Listing orders and 1,474 partially mechanized *Directory Listing orders* were excluded from its June data, and that it would start capturing Directory Listing orders beginning with its September 2001 data. *See* Florida OSS BellSouth's Response to Exception 114 (Att. 4). It must be emphasized that the ordering data that BellSouth relies upon in its application *exclude* Directory Listing orders. In any event, there is no sound basis upon which the GPSC and LPSC should have accepted BellSouth's allegations on these matters, particularly when the SQM did not authorize such exclusions.

35. In a letter to BellSouth dated October 22, 2001, AT&T delineated the following discrepancies and problems that it had uncovered during its investigation of BellSouth's data that affected AT&T's performance results;[28]

- Missing Directory Listings LSRs;
- Missing "dummy FOCs" in raw data files;
- The exclusion of LSRs received in one month and rejected in another that are missing from raw data and performance reports;
- BellSouth's accidental use of AT&T's company code to perform tests;

[28] Letter from Edward L. Gibbs to BellSouth, dated October 22, 2001 (Att. 5).

- The exclusion of orders classified as projects from FOC and rejection performance reports;
- The exclusion of completion notices from raw data and performance reports;
- The omission of manual FOCs in PMAP;
- FOCs transmitted at the same time as the completion notices; and
- The exclusion of partially-mechanized and non-mechanized LSRs in the Completion Notices table in November 2000.

36. Notably, in responding to AT&T's concerns regarding its investigation of data missing from AT&T's November 2000 raw data, BellSouth, in other contexts, has dismissed the significance of these issues, stating that data from November 2000 are "irrelevant as that data predates implementation of the SQM and the programming changes."[29] Despite BellSouth's assertions to the contrary, BellSouth's programming changes did not resolve its data integrity problems. As the DOJ points out, BellSouth's various software and coding changes have generated other errors in its data reporting processes. DOJ Eval. at 32-33. In fact, Exception 114 in Florida remains open because of BellSouth's improper exclusion of Directory Listings orders from its performance data. Further, if BellSouth's argument that AT&T's November 2000 data are somehow "irrelevant" is taken to its logical conclusion, it stands to reason that BellSouth cannot properly rely on KPMG's Georgia data integrity tests since the far majority of those tests involved data that predated November 2000.[30] In all events, the data integrity problems identified in our initial declaration, as well as the comments filed by CLECs and the DOJ, confirm that BellSouth's performance data are incomplete, inaccurate, and unreliable.

[29] *See* Varner Rebuttal Testimony, filed July 16, 2001, South Carolina PSC Docket No. 2001-209-C at 18 (Att. 6).

3. BellSouth's Constant Repostings of Performance Data Show Its Data are Untrustworthy.

37. AT&T's initial comments explained that the frequency and magnitude of BellSouth's corrections to and repostings of its performance data illustrate that its performance reports are untrustworthy. Bursh/Norris Decl. ¶¶ 90-94. Indeed, as explained in the initial and Reply Declaration of Jay Bradbury, BellSouth has repeatedly filed corrections to the flow-through data upon which it relies in its application. Bradbury Decl., ¶¶ 80-81; Bursh/Norris Decl. ¶ 84. In fact, BellSouth has revised its aggregate flow-through rates for June and August 2001 twice since they were first filed and revised its July 2001 aggregate flow-through rates three times. Further, BellSouth's repeated corrections to its performance results have not been confined to flow-through rates. As noted in our initial declaration, BellSouth's corrections have affected scores of measures and resulted in changes to compliance determinations in BellSouth's performance reports. Bursh/Norris Decl. ¶¶ 90-92. As the DOJ aptly observes, BellSouth's consistent pattern of correcting and reposting its performance results — "particularly those that result in changes to the performance on which BellSouth relies in this application — makes it difficult to conclude that these data accurately depict BellSouth's performance and can be relied upon to establish benchmarks for future performance." DOJ Eval. at 34 (footnotes omitted).

38. The GPSC and LPSC both reject the CLECs' arguments that BellSouth's performance data are unreliable. Thus, for example, in analyzing BellSouth's flow-through performance, the GPSC did not challenge the reliability of BellSouth's flow-through data. *See* GPSC at 99-100. Further, the LPSC states generally that "BellSouth has refuted, for purposes of this proceeding, AT&T's allegations concerning the integrity of the performance data that

[30] As noted in our initial declaration and herein, even the KPMG third party test does not support BellSouth's assertion that its data are accurate and reliable.

BellSouth has filed and on which it relies." LPSC at 30. When BellSouth responded to AT&T's arguments at the state level regarding its constant restatements of performance results, BellSouth claimed that it had made only "minor changes regarding its reporting of only two metrics (FOC/REJ Completeness and ACNI).[31] Similarly, in its pending application BellSouth attempts to leave the clear impression that any changes to its reports "are minimal and have no effect on the underlying results." Varner GA Aff. ¶382. BellSouth is wrong.

39. As the comments of AT&T, the DOJ and others confirm, BellSouth's persistent pattern of corrections to and restatements of its reports has resulted in numerous and substantial changes to its performance reports that belie BellSouth's claims that its changes are minimal, and that its data are accurate and reliable. WorldCom at 17-20; Bradbury Reply Decl. ¶ 36; DOJ Eval. at 34.

4. The KPMG Metrics Audit in Georgia Does Not Prove that BellSouth's Data are Accurate and Reliable.

40. Wrapping itself in the KPMG metrics tests, BellSouth asserts that those tests prove that its data are reliable. However, as the Department of Justice correctly observes, BellSouth cannot properly rely upon the "three performance metrics audits" that have been conducted and are currently being conducted by KPMG as proof that its data are accurate and reliable. DOJ Eval. at 32 n. 109. As the Department of Justice, AT&T and others confirm, KPMG's Third Party test of BellSouth's OSS in Georgia (which includes metrics tests) "was limited in scope." DOJ Eval. at 5 (footnote omitted). Further, the Department of Justice

[31] Varner Affidavit in Response to Staff Recommendation on Behalf of BellSouth Telecommunications, Inc., filed August 20, 2001, ¶ 30 (Docket No. U-22252-E).

correctly recognizes "that a number of performance-related criteria were deemed satisfied even where performance did not meet established Georgia PSC standards." DOJ Eval. at 5 n. 14.[32]

41. Even if the Georgia test were error free -- and it is not -- BellSouth cannot properly rely on that test as proof that its data are accurate and unassailable. Contrary to the clear inferences BellSouth is attempting to draw, even the Georgia test generated a number of exceptions that contradict BellSouth's claims regarding the accuracy and reliability of its performance data. Moreover, the metrics portion of the test is not complete.

42. On November 2, 2001, KPMG issued an interim status report on developments concerning the BellSouth-GA OSS Test Master Test Plan and Supplemental Test Plan final report.[33] KPMG reported that the following exceptions remain open in the Performance Measurements test (*id.*).

> Exception 86 (issue 1) – *Percent Provisioning Troubles Within 30 Days of Service Order Completion* — KPMG Consulting continues to be unable to replicate the values BellSouth reports in its monthly SQM reports for the CLEC aggregate and BellSouth retail categories. BellSouth currently believes these issues will be addressed effective with the September 2001 reports published this month. KPMG Consulting will retest this issue using the September 2001 raw data and determine whether its calculations and the BellSouth reported values agree. . . .
>
> Exception 89 (issue 3) — *Pre-Ordering – OSS Response Interval* . . . KPMG Consulting continues to discuss the early stage data from the ROS with BellSouth. Additionally, KPMG Consulting is expecting raw and early stage data for the RNS and TAG systems from BellSouth shortly, in order to conduct further testing of data from these systems.

[32] As AT&T pointed out in its initial comments, BellSouth's preferential treatment of test orders in Georgia and Florida underscores that BellSouth's data are untrustworthy. Bursh/Norris Decl. ¶¶ 68-69. The Department of Justice also has noted that it is "gravely concerned by BellSouth's admission that it did not process test orders as it would have during the normal course of business," and that "[s]uch actions . . . undermine the integrity of the Georgia test results as a whole." DOJ Eval. at 5, n. 14.

[33] *See* BellSouth-GA OSS Testing Evaluation Interim Status Report – MTP/STP Activities, November 2, 2001 (Att. 7).

> Exception 122 — BellSouth has indicated that effective October 2001 for orders arising from the TAG system, it will be using gateway timestamps in its Ordering metric duration calculations. BellSouth also indicated that it is currently working to use gateway time stamps for these duration calculations for those orders arising from the EDI systems. A corresponding update will be made to the SQM manual specifically indicating the use of these timestamps when the changes have been implemented in both systems.
>
> Exception 136/137 . . . To resolve the remaining issues with the TAG data, KPMG Consulting intends to perform a data integrity comparison of early stage and raw data upon receipt of August 2100 data. KPMG Consulting expects to receive these data shortly.

43. The exceptions that remain open in Georgia relating to data replication and integrity are neither trivial nor insignificant. Indeed, in explaining the importance of Exception 137, KPMG initially stated that "CLECs rely on BellSouth's performance measurement reports to assess the quality of service provided by BellSouth and to plan further business activities. If SQM reports are based on incomplete or inaccurate raw data, CLECs will not receive accurate SQM information for these purposes." The projected completion date for the metrics portion of the third party test in Georgia is March 2002.

44. Further, as our initial declaration explained, the GPSC ordered a separate audit of BellSouth's performance measures, processes and data to assess their compliance with the GPSC's January 12, 2001 order. That audit is designed to re-examine all of BellSouth's previously-audited measures that were affected by the January 2001 Order and examine any new metrics and levels of disaggregation that were implemented after the GPSC's January 6, 2000 order. Bursh/Norris Decl. ¶ 25; DOJ Eval. at 32, n. 109 (noting that this audit "will include the first audit of a significant number of new products disaggregation and newly implemented measures"). The GPSC ordered KPMG to complete an audit of BellSouth's performance

measures, processes and data after BellSouth modified at least 70% of its measures in response to the GPSC's January 2001 order.

45. During a recent status conference call, KPMG reported that, pursuant to the GPSC's January 2001 order, it has been attempting to replicate BellSouth's calculations of Service Quality Measurements for the May, June and July PMAP Reports as part of the PMR 5: Metrics Replication test. KPMG reported that, out of 16 metrics reports, it has matched 5 metrics reports; it could not match 3 metrics reports; and it has not yet completed testing the remaining metrics reports.

46. KPMG also reported that it is also attempting to replicate the performance results that BellSouth provided on trend charts for the 271 Filing packet as part of the PMR 5: Metrics Replication test. *See also* Bursh/Norris Decl. ¶ 26. According to KPMG, BellSouth provides over 2,200 metrics charts each month. KPMG reported that:

- During Month 1, it attempted to replicate 853 metrics charts (39% of 2,200), but was unable to replicate 146 metrics charts;
- During Month 2, it attempted to replicate 740 metrics charts (34% of 2,220), but was unable to replicate 125 metrics charts; and
- During Month 3, it attempted to replicate 274 metrics charts (11% of 2,200), but was unable to replicate 29 metrics charts.

47. KPMG now projects that it will not complete this audit until March 31, 2002. KPMG also reported that its work on the following items is in the early stages of implementation: PMR-1 (Metrics Data Collection and Storage); PMR-2 (Metrics Standards and Definitions); PM-4 (Metrics Data Integrity); PMR-5 (Metrics Calculation); PMR-6 (Statistical Methodology); and PMR-7 (Enforcement/Remedies Analysis). Thus, the Georgia audit of BellSouth's performance measures and data is not yet complete, and significant issues relating to the accuracy and reliability of BellSouth's performance measures and data in Georgia remain

unresolved. Although BellSouth tries to leave the clear impression that KPMG validated the accuracy of its data, the evidence is to the contrary.

48. Additionally, as noted in our initial declaration, the third party test of BellSouth's OSS in Florida has revealed significant problems regarding the accuracy and reliability of BellSouth's data — including problems that the Georgia third-party test failed to uncover. Bursh/Norris Decl. ¶¶ 28-29. The third party test in Florida confirms the inconsistencies between BellSouth's performance reports and the underlying data BellSouth purportedly uses to generate those reports. Significantly, as of November 3, KPMG identified 9 open observations and 8 open exceptions in Florida related to performance measures.[34] Indeed, KPMG has been unable to replicate a number of BellSouth's reports using the raw data BellSouth makes available.

49. Thus, BellSouth invites this Commission to approve its application even though: "[p]roblems with BellSouth's performance data have been identified by CLECs, KPMG, the Department, and BellSouth itself;"[35] performance metrics exceptions remain open in Georgia; the metrics audit in Georgia will not be completed until March 2002; metrics replication problems have been uncovered in the limited metrics testing that has been completed thus far in Georgia; and there are open exceptions in Florida relating to the integrity of BellSouth's performance data. The Commission should decline that invitation. There is no sound basis for concluding, at this juncture, that BellSouth's performance data provide probative evidence that BellSouth has satisfied its Section 271 obligations.

---

[34] *See* Exceptions 10, 22, 27, 36, 101, 109, 113, and 114; Observations 68, 105, 112, 113, 118, 125, 126, 129, and 131.

[35] DOJ Eval. at 32 (citations omitted).

50. Both the LPSC and the GPSC reject AT&T's argument that BellSouth's performance data are unreliable. Further, both Commissions state that "performance data does not need to be subjected to a third-party audit before it may be considered in determining whether a BOC is compliant with a checklist item." LPSC at 30; GPSC at 119. AT&T acknowledges that the Commission in its *Texas 271 Order*[36] rejected the notion that a Section 271 application cannot be approved if the BOC's performance data have not been audited. Notably, in that decision the Commission observed that "the accuracy of the specific performance data relied upon by SWBT is not contested." *Texas 271 Order* ¶ 57. However, BellSouth's application is distinguishable from SWBT's Texas application.

51. In this proceeding, AT&T, other CLECs and the Department of Justice have, in fact, challenged the performance data on which BellSouth relies. Notably, BellSouth's own application is littered with admissions regarding errors in its data collection and reporting processes. Bursh/Norris Decl. ¶¶ 101-102. There are open exceptions in the Georgia Third Party Test regarding BellSouth's performance data; and the ongoing Georgia metrics audit in Georgia has uncovered issues regarding the accuracy of BellSouth's data. Furthermore, the ongoing OSS Test in Florida has unearthed significant problems regarding the reliability of BellSouth's data. And the testing of BellSouth's performance data in Georgia will not be concluded until March 2002. The confluence of these events compels the conclusion that BellSouth has not demonstrated that its performance data are accurate and reliable and show checklist compliance. As a consequence, BellSouth's application should be rejected, and

---

[36] Memorandum Opinion and Order, *In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Service, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* 15 FCC Rcd 18,354 (June 30, 2000) (*"Texas 271 Order*).

BellSouth's application should not be approved until it has demonstrated that its data are accurate, and that those data show that it is satisfying its statutory obligations.

C. BellSouth Does Not Provide CLECs With All Necessary Raw Data.

52. As we explained in our initial declaration, despite two GPSC orders, BellSouth still does not provide CLECs with the raw data to which they are entitled to verify the accuracy of BellSouth's performance reports. Bursh/Norris Decl. ¶¶ 96-100. Both the LPSC and GPSC state that BellSouth successfully refuted all of the performance data integrity issues that AT&T raised. *See* GPSC at 129-134; LPSC at 30. In reaching these findings, the LPSC and GPSC apparently accept the following testimony of BellSouth's witnesses, Messrs. Stacy and Varner:

> [Ms. Norris] alleges that BellSouth refused to produce LNP raw data. Contrary to Ms. Norris' allegation, as AT&T is already aware, such data was made available beginning with May 2001 data. Raw data is available for measurements provided by the PMAP system. These measurements were not initially produced in PMAP, so this raw data was not planned to be in PMAP when these measurements were initially produced. In order to expedite production of LNP data, BellSouth implemented these LNP reports in the LNP Gateway instead of from PMAP. The reports and the corresponding raw data are in PMAP for the May 2001 data.[37]

53. However, BellSouth's explanation cannot withstand scrutiny. Indeed, BellSouth still has failed to provide AT&T with LNP flow-through data. Because AT&T does not have access to BellSouth's LNP raw data, it cannot readily determine if BellSouth is excluding LNP data from its performance reports or assess the quality of service BellSouth is providing. In addition, BellSouth has unilaterally excluded the following categories of data from its raw data files: (1) directory listing orders for certain ordering measures; (2) orders classified as projects for certain ordering measures; (3) LSRs submitted in one month and rejected in

[37] Stacy Performance Reply Aff. ¶ 63; Varner (LPSC) Reply Aff. ¶ 73.

another; (4) dummy FOCs; and (5) completion notices sent in a month different from the month in which the work was completed. Given the substantial problems with the integrity of BellSouth's data that have been revealed to date, it is absolutely essential that CLECs have access to BellSouth's raw data so that they can properly evaluate the accuracy of BellSouth's performance results.[38]

D. BellSouth's Own Data, Combined With CLEC Data, Show That It Is Not Meeting Its Statutory Obligations.

54. In addition to the many gaps and other inadequacies in the performance data submitted by BellSouth, even BellSouth's own incomplete and inadequate data, coupled with the CLEC data, show that it has not provided CLECs with nondiscriminatory performance.

1. BellSouth Has Not Satisfied Its Section 271 Obligations With Respect to the Preordering Process

55. The GPSC in its report asserts that BellSouth's "Performance data from March through June 2001 reflects that BellSouth systems consistently met the established benchmark for interface availability Metric for all pre-ordering interfaces." GPSC at 89 (footnote omitted). *See also* LPSC Eval. at 30-36 (noting generally BellSouth's compliance with pre-ordering standards). However, the LPSC and GPSC fail to consider that BellSouth's Percent Interface Availability measure "does not reliably depict CLEC experience since it tracks only full outages, *id.*, and excludes instances in which an interface is not totally inoperative but is providing service so degraded as to be practically unusable." DOJ Eval. at 36 n. 126. *See also* Birch at 30.

---

[38] The testimony that Mr. Varner presented in Louisiana regarding access to raw data is internally inconsistent. In his affidavit filed on June 25, 2001 (¶ 63) Mr. Varner insisted that partially-mechanized orders were included in March data. In his affidavit filed on August 20, 2001 (¶ 57) Mr. Varner admitted that partially-mechanized orders were not included in the March data. Similarly, in his June affidavit (¶ 67), Mr. Varner stated that the only data that were excluded from the raw data files were cancelled orders for the Order Completion Interval and the Average Completion Notices Interval reports. However, in his August affidavit (¶¶ 56-57) Mr. Varner admitted that Completion Notices were missing from the raw data files.

56. Further, although the GPSC concedes that "BellSouth's pre-order response time for HAL/CRIS access via LENs has been longer for CLECs than for BellSouth retail," it "believes that the Tier II penalties for failure to meet this benchmark should provide adequate incentive for BellSouth to continue to improve its performance." GPSC at 90. Notwithstanding the GPSC's hopeful expectations, as explained in our initial declaration, the Georgia performance remedy plan cannot effectively deter non-compliant behavior. Indeed, under Tier II of the Georgia remedy plan, BellSouth can have two consecutive months of discriminatory performance and not incur any penalties if it satisfies the performance standard in the third month. Thus, under Tier II, BellSouth could provide discriminatory service at the industry level for 8 months within a year and suffer no Tier II penalties. Bursh/Norris Decl. ¶ 138. Worse yet, any penalty payments it incurs are based upon an average of the affected volume transactions over three consecutive months of non-compliant performance. Bursh/Norris Decl. ¶ 139. Thus, no solace can or should be taken that the Georgia remedy plan will provide the necessary incentives so that BellSouth will cure any existing deficiencies in its performance or refrain from noncompliant conduct in the future.

2. BellSouth Has Not Satisfied Its Section 271 Obligations With Respect to the Ordering Process.

57. **Functional Acknowledgements**. The GPSC's report notes that BellSouth has provided timely Functional Acknowledgements for CLEC orders from March through June 2001. GPSC at 93. Although the GPSC concedes that BellSouth missed the performance benchmark for functional acknowledgement timeliness in May, the GPSC does not reference that BellSouth also failed to meet the benchmark in August for EDI. Further, as explained in our initial declaration, an examination of BellSouth's Acknowledgement Message Timeliness Report in Georgia reveals that BellSouth's performance data are unreliable. Bursh/Norris Decl. ¶ 85.

BellSouth's own self-reported data contain discrepancies regarding the number of acknowledgements that AT&T should have received. *Id.* For these reasons, BellSouth's data cannot be trusted.[39]

58. **Flow Through.** As the comments of AT&T and others show, BellSouth continues to manually process an excessive number of orders — a phenomenon that is plainly within BellSouth's control. *See, e.g.*, Bradbury Reply Decl. ¶¶ 31-60. Even BellSouth's own flow-through data — data that BellSouth has revised repeatedly — show that BellSouth's flow-through rates are well below the performance benchmarks. *Id.* The findings of the GPSC and LPSC that BellSouth's flow-through rates demonstrate that BellSouth complies with its statutory duties rest are incorrect. Thus, for example, the LPSC concedes that BellSouth's business flow-through rates require improvement, and that its flow-through rates for UNE orders come close to meeting the target benchmarks. The LPSC, nevertheless, takes solace that BellSouth's flow-through rates will improve in the future. LPSC at 45. However, the LPSC fails to recognize that, even BellSouth's residential resale flow-through rates failed to meet performance standards, and that BellSouth's UNE rates declined from April to June. *Id.* at 44. Moreover, the LPSC's hopeful expectations that BellSouth's performance will improve are of no probative value in evaluating BellSouth's present compliance with Section 271.

59. The GPSC's analysis is also deficient. The GPSC claims, *inter alia*, that BellSouth's flow-through rates compare favorably to the flow-through rates of SWBT and Verizon when they received Section 271 approval, and that BellSouth's flow-through rates

[39] The GPSC also emphasizes that BellSouth's Average Speed of Answer decreased from March to July 2001. GPSC at 86. Although BellSouth's speed of answer may have improved over that period, Mpower's witness, Nancy Bingham, recently testified that the quality of service rendered by BellSouth has been abysmal. During hearings, Mpower's witness testified that, although holding times have improved, the representatives answering the calls are unable to provide any real assistance. Tr. 256-257 (Bingham) June 13, 2001 (NC PUC Docket No. P-100, Sub 133K) (Att. 8).

"should improve" in the future. GPSC at 100. The former argument "even if true, does not address the extent to which BellSouth's manual processing negatively affects CLECs," (DOJ Eval. at 15, n. 42) and the latter argument rests on promises of future performance that are entitled to no probative weight. Furthermore, both Commissions fail to recognize that BellSouth's reported flow-through results are unreliable because they have been revised repeatedly, exclude xDSL orders, and include Dummy FOCs. DOJ Eval. at 15, 34-35; Bradbury Reply Decl., ¶¶ 34-53.

60. **Firm Order Confirmations**. The LPSC and GPSC conclude that BellSouth is providing timely FOCs for partially mechanized LSRs. *See* GPSC at 95. LPSC at 41. However, the PSCs fail to address AT&T's evidence that BellSouth unilaterally altered the business rules governing the measure by excluding "non-business" hours when calculating FOC timeliness rates for partially mechanized orders[40] and omitting Directory Listings orders from its results.[41] Further, the evaluations of the GPSC and LPSC do not address AT&T's evidence that BellSouth's average interval for returning FOCs on partially mechanized orders is 18 hours. *See* Bradbury Decl. ¶¶ 135-141; GPSC at 75, 94-99 (reciting AT&T's evidence as to timeliness of FOCs for partially mechanized orders).[42]

61. **Rejection Notices**. In finding that BellSouth is providing rejection notices in a timely manner, the LPSC and GPSC fail to consider that BellSouth has manipulated its performance results by unilaterally excluding non-business hours when calculating results for

[40] *See* GPSC at 94-99; LPSC at 41-42; Bradbury Decl. ¶¶ 128-130; Bursh/Norris Decl. ¶¶ 41-44.

[41] Bursh/Norris Decl. ¶ 63.

[42] As we explained in our initial declaration, according to BellSouth's business rules, the measures on Rejected Service Request, FOC/Reject Response Completeness, and FOC/Reject Response Completeness (Multiple Responses) all have the same denominator (the number of LSRs received). However, the volumes reported for each of these measures do not match for UNE-P and LNP data. Bursh/Norris Decl. ¶¶ 70-80.

partially mechanized orders,[43] excluding LSRs submitted in one month and rejected in another,[44] excluding orders that it unilaterally classifies as projects,[45] and excluding Directory Listings orders.[46]

62. **Completion Notices**. The comments show that BellSouth has not provided timely order completion notices to CLECs. WorldCom at 2; Bradbury Decl. ¶¶ 144-147. Relatedly, KPMG found in its testing of BellSouth's OSS in Florida and Georgia that BellSouth's performance in this area was subpar. Bradbury Decl. ¶¶ 145-147.

63. Curiously, the GPSC's evaluation does not address BellSouth's performance with respect to the timely provisioning of completion notices. Although the LPSC concedes that BellSouth has "provided poor performance" in this area, it essentially excuses BellSouth's performance failure by, *inter alia*, accepting BellSouth's promises to improve its performance through implementation of a "specific action plan." LPSC at 45-46. The LPSC also notes "substantial improvement" in BellSouth's performance in July and August. The LPSC's analysis is infirm. In this regard, the LPSC's analysis rests impermissibly on BellSouth's promises to improve its performance — promises that have no probative weight in assessing BellSouth's present compliance with the checklist. Further, the LPSC's assertion that BellSouth substantially improved its performance in July is inconsistent with the LPSC's statement that BellSouth incurred penalties for failing to meet performance standards in July. LPSC at 46. Moreover, the LPSC fails to recognize that BellSouth's performance data on completion notices are inaccurate. As explained in our initial declaration, in August 2001,

---

[43] *See* GPSC at 94-99; LPSC at 41-42; Bradbury Decl. ¶¶ 128-130; Bursh/Norris Decl. ¶¶ 41-44.

[44] Bursh/Norris Decl. ¶ 40.

[45] *Id.* ¶ 50.

[46] *See* GPSC at 94-99; LPSC at 41-42; Bursh/Norris Decl. ¶¶ 61-63.

AT&T discovered that completion notices were missing for over 20% of AT&T's orders. Bursh/Norris Decl. ¶ 111. Furthermore, an examination of BellSouth's July MSS CLEC aggregate report reveals that substantial numbers of completion notices are missing from BellSouth's performance reports. Bursh/Norris ¶ 112. Similarly, other CLECs have confirmed that BellSouth's performance reports do not include substantial volumes of completion notices. WorldCom at 9-12. For all these reasons, it is clear that BellSouth has not met the performance benchmarks in its provisioning of completion notices.

64. **Jeopardy Notices.** As discussed in our initial declaration, BellSouth has improperly implemented the business rules governing jeopardy notices. Bursh/Norris Decl. ¶¶ 46-49. Indeed, BellSouth has conceded that it has been measuring the jeopardy notice interval by capturing the interval between the date/time the jeopardy notice is issued and the date/time of order completion. Bursh/Norris Decl. ¶ 47; Varner GA Aff. ¶ 44; DOJ Eval. at 37 & n.129; Bradbury Decl. ¶¶ 142-143. Further, Birch, in its comments, notes that BellSouth failed to provide *any* jeopardy notices for orders where BellSouth missed the offered due date. Birch at 22-23. In view of BellSouth's own admission that it failed to measure properly its performance in providing jeopardy notices, the findings of the LPSC and GPSC on this issue are incorrect. The GPSC asserts that, because "relatively few orders are actually placed in jeopardy," it is clear that BellSouth has satisfied its obligations to provide jeopardy notices in a timely manner. GPSC at 102. However, the GPSC's analysis fails to acknowledge that the purported small volume of jeopardy notices may be attributable to BellSouth's failure to *provide* any jeopardy notices in the first instance. The LPSC's analysis is equally wanting. The LPSC's analysis inappropriately rests on BellSouth's promises to properly calculate its performance in

the provisioning of jeopardy notices — promises that should not be credited in determining its present compliance.

65. **Service Order Accuracy.** The comments confirm, as BellSouth's own data show, that BellSouth's service order accuracy rates are woefully low. DOJ Eval. at 17-19; Birch at 19-20; Bursh/Norris Decl. ¶ 116; AT&T at 23. As the DOJ correctly observes, BellSouth has "missed by a wide margin almost all of the order accuracy performance standards for UNEs in June and July in both Georgia and Louisiana." DOJ Eval. at 17, n. 51. *See also* Birch at 19-20. Conspicuously absent from the LPSC's evaluation is any analysis of BellSouth's performance failures in this area. The GPSC's evaluation does not take into account more recent data. Indeed, the GPSC finds that BellSouth satisfied most of the service accuracy submetrics in May and June, but ignores that BellSouth failed miserably in that area in July and August. GPSC at 102; Bursh/Norris Decl. ¶ 116.

3. BellSouth Has Not Satisfied Its Section 271 Obligations With Respect to Provisioning.

66. **UNE-P.** Although the GPSC concedes that BellSouth failed to meet the retail analog in March, April and June 2001 for provisioning (non-dispatch) Loop and Port combination orders with fewer than 10 circuits, the GPSC, relying on BellSouth's Gertner/Bamberger study presented in state proceedings, asserts that "BellSouth would have met the applicable retail analog in both categories but for improperly "L"-coded orders and customer-caused misses." GPSC at 105 (footnote omitted). Similarly, the LPSC, citing BellSouth's Bamberger study, also states that BellSouth's provisioning of nondispatch UNE loop combination and port orders were adversely affected because CLECs failed to designate LSRs with L code orders when requesting an interval beyond BellSouth's offered interval. LPSC at 46.

67. Significantly, BellSouth's various explanations regarding the purported effect of the L code are flawed and internally inconsistent. Indeed, in proceedings before the GPSC, AT&T pointed out that BellSouth's Gertner/Bamberger study regarding the impact of L-coding on BellSouth's performance results contradicted the testimony of another BellSouth witness, William Stacy. In this regard, the Gertner/Bamberger study purported to analyze the reasons underlying BellSouth's failure to meet the provisioning interval for non-dispatch UNE loop combination and port orders in March 2001. BellSouth's Gertner/Bamberger study attributed the provisioning failures in March 2001 to the CLECs' failure to L-code orders that requested extended due dates.[47] However, AT&T pointed out that the Gertner/Bamberger study was in direct conflict with an OSS Affidavit that William Stacy filed on May 31, 2000, in which Mr. Stacy stated that, "[o]n February 24, 2001, BellSouth began to add the 'L' code to all electronic orders for which a CLEC requested an extended interval but did not have the appropriate code on the LSR."[48] AT&T argued that, inasmuch as the Gertner/Bamberger study analyzed CLEC orders placed in March 2001 *after* BellSouth's automatic application of L codes went into effect, L-coding should not have impacted BellSouth's performance results in March 2001 or thereafter.

68. In addition, AT&T also demonstrated that the methodology used in the Gertner/Bamberger study was flawed in other respects. In this regard, in their study, Messrs. Gertner and Bamberger purported to conduct an analysis of the "customer requested due date."[49] *Id.* Messrs. Gertner and Bamberger explained that "[e]ach order from a CLEC includes a

---

[47] *See* Gertner/Bamberger (LA) Aff. ¶¶ 4, 6, 9, 17, 23 (LPSC Ex Parte Docket No. U-22252E, June 21, 2001); Gertner/Bamberger (GA) Aff. ¶¶ 4, 6, 9, 17, 23 (GPSC Docket No. 6863-U, May 31, 2001).

[48] BellSouth's OSS Affidavit of William N. Stacy, filed May 31, 2001, GPSC Docket No. 6863-U ¶ 419.

[49] Gertner/Bamberger (LA) Aff. ¶¶ 9, 12-13; Gertner/Bamberger (GA) Aff. ¶¶ 9, 12-13.

customer requested due date, which indicates when the customer wants the order filled." *Id.* ¶ 9. Thus, the Gertner/Bamberger study suggested that the source of the customer-requested due date is the CLEC LSR, and that BellSouth's subsequent calculations of its installation intervals are based upon the due date requested by the CLEC that is reflected in the LSR. However, BellSouth admitted during a hearing that the "customer requested due date" that BellSouth used in its calculations was actually the date BellSouth provided on the FOCs it released to the CLECs.[50] Notably, the date BellSouth provides on the FOCs may not be the same as the date the CLEC places on the LSR. For all of these reasons, the weight of the evidence demonstrates that the Gertner/Bamberger study is demonstrably unsound.

69. Although BellSouth, in its pending application, does not cite the Gertner/Bamberger study, it does discuss the effect of L-coding on its performance results. BellSouth's witness Mr. Varner states that BellSouth's provisioning of resale orders was adversely affected because BellSouth's service representatives did not assure that requested extended due dates were properly classified with an L code. Varner GA Aff. ¶ 287. In contrast, BellSouth's witness Mr. Stacy states that BellSouth's order completion intervals for UNE combination nondispatch orders were adversely affected because of the CLECs' failure to enter the L code on LSRs. Stacy Aff. ¶ 575. Thus, it appears that Mr. Varner attributes any L coding problems to BellSouth error, while Mr. Stacy attributes such L coding problems to CLEC error. Mr. Stacy's testimony is incorrect. Indeed, when AT&T recently asked BellSouth whether CLECs are somehow responsible for designating L codes, BellSouth responded as follows:

> I would be interested in knowing who said you (AT&T) were supposed to enter the "L" code on your LSR. This is our internal code we (BellSouth) use to designate the requested due date is beyond the normal interval. It is not something you or any CLEC

[50] Transcript, Vol. III at 1967-1968, Ala. PSC Docket No. 25835 (Att. 9).

> can do. Sorry you were given bad information. Let me know the source so that I can educate them.[51]

As the foregoing message from BellSouth makes clear, BellSouth is responsible for L coding orders.

70. In any event, as noted above, in testimony before the GPSC, Mr. Stacy *admitted* that BellSouth fixed the L coding problem in February 2001. As a result, the L coding problems BellSouth describes in its application should have been resolved commencing with BellSouth's March performance results. Moreover, given the internal inconsistencies in BellSouth's own testimony and its admission that the L coding problems were resolved in February 2001, BellSouth's various explanations regarding the impact of the purported L coding problem should not be credited.

71. Similarly, both the LPSC and GPSC accept BellSouth's explanations during state proceedings that it failed to meet the parity standard when provisioning UNE combination nondispatch orders because it gave UNE combination loop and port nondispatched orders the same interval as dispatch orders. The LPSC and GPSC also accept BellSouth's explanation that *it resolved* the due date calculation problem on June 2, 2001. *See* LPSC at 46, GPSC at 105.

72. As noted in the initial and reply Bradbury declarations, although BellSouth claims that it resolved the due date calculation problem in June, even after BellSouth's purported fixes, AT&T found that 40-50% of the UNE-P orders that it submitted were given due dates that exceeded the standard intervals that AT&T had specifically requested. Bradbury Decl. ¶ 44. As Mr. Bradbury explains in his Reply Declaration, BellSouth admitted that its due date

[51] Electronic Message from Michele Paladino (BellSouth) to Bernadette Siegler (AT&T) dated August 24, 2001 (Att. 10).

calculation does not assign correct due dates. As a result of a "system defect," BellSouth first suggested that any CLEC encountering problems with the due date calculation should use a "workaround." Under this arrangement, if an order is given an erroneous due date by the due date calculation: the order will flow through; the CLEC will receive a FOC with the wrong due date; and the LCSC will issue a second FOC with the correct due date. However, this system is unsatisfactory because it requires the CLEC to examine each FOC, assess whether the due date on the FOC is accurate, and contact the LCSC to request a corrected due date. In addition, it remains unclear how BellSouth captures the two FOCs (the incorrect and correct FOCs) in its reports. Thus, for example, if BellSouth measures its FOC timeliness performance based upon the interval that elapses between receipt of a valid LSR and distribution of its <u>first</u> FOC, its actual performance would be obscured. Indeed, if BellSouth were permitted to measure its performance in such a manner, it could always send an erroneous FOC and then send an accurate FOC later.

73. BellSouth recently announced once again that it had developed yet another fix for the due calculator problem. BellSouth advised AT&T that it has implemented a mechanical fix that requires BellSouth to review FOCs four times daily to determine whether the due date assigned exceeds the standard interval, and, if so, to issue a second FOC with the correct standard interval. It remains unclear, however, whether this so-called mechanical fix has resolved the due date calculator problem. Indeed, on November 9, 2001, BellSouth reported that it "currently does not have an implementation date for the correction of the extended due date problem with UNE-P orders and was "working with [AT&T] to determine if there are any issues with the proposed workaround."[52] Even assuming *arguendo* that BellSouth's mechanical fix will

[52] *See* Electronic Message from BellSouth Change Control to CLECs, November 9, 2001 (Att. 11).

somehow resolve BellSouth's problems in assigning correct due dates on UNE-P orders, it remains unclear how BellSouth will handle the two FOCs it issues on the same version of one LSR when calculating its on-time performance. Again, if BellSouth is measuring its FOC timeliness performance on the basis of the first, inaccurate FOC, then its performance results are inaccurate. Moreover, the LPSC and GPSC are incorrect in accepting BellSouth's representation that it had, in fact, resolved the due date calculator problem in June.

74. **Hot Cuts.** The comments confirm that BellSouth's hot cut performance is wholly inadequate and worsening. Berger Decl. ¶¶ 40-71. The LPSC and GPSC reached a contrary conclusion based upon BellSouth's own hot cut metric. GPSC at 161; LPSC at 59. However, as AT&T has explained, BellSouth's hot cut measure is misleading because it does not measure the interval from the due time until the time the CLEC is advised that the hot cut has been completed. Berger Decl. ¶ 44. When BellSouth's performance is measured against the proper metric, it is clear that BellSouth's performance is deficient. *Id.*

4. BellSouth Has Not Satisfied Its Section 271 Obligation With Respect to Maintenance and Repair.

75. The LPSC, although conceding that BellSouth's performance in the area of maintenance and repair has been problematic, nevertheless, concludes that the performance remedy plan should provide sufficient incentives for BellSouth to improve its performance in this area. Thus, for example, the LPSC points out that BellSouth's maintenance and repair performance for xDSL orders "experienced a 'serious drop' from approximately 88 % in April to 55% in May." LPSC at 62. Further, the LPSC's analysis of BellSouth's maintenance and repair performance for xDSL orders shows that BellSouth's performance has been erratic. According to the LPSC, in June, BellSouth satisfied 77.8% of the benchmarks in this area; however, by August, its performance had plummeted to 62.5%. LPSC at 62. Similarly, the

LPSC also admits that BellSouth should pay "particular attention" to its performance under the % Repeat Troubles within 30 days measures for xDSL orders.

76. Undaunted by these performance failures, the LPSC states that it believes that the performance remedy plan should provide the necessary incentives so that BellSouth will improve its performance. *Id.* at 62. There is simply no basis for the LPSC's claim that the monetary penalties under the remedy plan will assure that BellSouth will take the corrective steps necessary to correct existing performance failures and open the local exchange market to competition. The incentives for long-distance entry under Section 271, rather than the monetary incentives under the remedy plan, will be more effective in ensuring that BellSouth satisfies its Section 271 obligations. In reaching the opposite conclusion, the LPSC obscures the distinct difference between the purpose of performance remedy plans and the basic principles undergirding Section 271 standards.

77. The basic purpose of an anti-backsliding plan is to provide sufficient incentives for a BOC to continue providing CLECs with nondiscriminatory access to its OSS after a Section 271 application is granted. Thus, an anti-backsliding plan is predicated on the assumption that the BOC has already proven its ability to comply with the Act and simply needs an incentive not to discriminate post-271 entry. In fact, it is the lure of Section 271 authorization that is supposed to bring a BOC such as BellSouth into compliance with the Act in the first instance. By contrast, once a BOC enters the long-distance market, its incentive to provide service in a nondiscriminatory manner and to keep the local markets open to competition diminishes. Because of these realities, Section 271 requires that the BOC demonstrate in its Section 271application that it has, in fact, fully implemented the checklist.

5. BellSouth Has Failed in the Area of Trunk Blocking.

78. In its opening comments, AT&T explained that BellSouth's performance in the area of trunk blocking is sorely deficient. McConnell/Berger Decl. ¶¶ 7-27. The LPSC's evaluation dismisses these arguments by stating that BellSouth met the Trunk Group Performance Aggregate Measure from April through August 2001. LPSC Eval. at 16-17. The LPSC's evaluation, however, fails to recognize that the trunk blocking measure on which it relies does not accurately measure performance and does not reflect the trunk blockage CLECs are experiencing. Bursh/Norris Decl. ¶ 73.

79. On the other hand, although the GPSC concedes that BellSouth failed to meet the trunk blockage benchmark in Georgia in March, April and June 2001, the GPSC diminishes these failures by stating that "individual CLECs have not experienced significantly disparate levels of trunk blockage as evidenced by the relatively small amounts of Tier I penalties BellSouth has paid under this measure." GPSC at 40. The GPSC's analysis is flawed in several important respects. First, the GPSC fails to recognize that the trunk blocking measure on which BellSouth relies is unreliable and fails to capture BellSouth's actual performance. Bursh/Norris Decl. ¶ 73; McConnell/Berger Decl. ¶¶ 13-27; DOJ Eval. at 37.

80. Second, the GPSC's reliance on the "small amounts" of the penalties that BellSouth has paid as evidence that CLECs have not experienced significant trunk blockage is misplaced. As explained in our initial declaration, the structural defects in the Georgia performance remedy plan, including the delta value, benchmark adjustment table, and statistical methodologies, effectively shield BellSouth from experiencing substantial financial penalties for non-compliant conduct. Bursh/Norris Decl. ¶¶ 123-162.

81. Third, if the GPSC is using the penalty plan as a basis for determining the quality of BellSouth's performance, it ignores that BellSouth is incurring penalty payments on a

consistent basis for its chronic performance failures in this area. The Tier 1 remedies for the Trunk Group Performance CLEC Specific measures taken from the web site reveal that BellSouth has incurred the following penalties from April through September 2001.

April	$ 98,323.47
May	8,631.00
June	18,409.07
July	22,804.00
August	7,350.00
September	51,575.00

82. Notably, the mere fact that BellSouth has incurred monthly penalty payments for its chronic failure to meet the albeit flawed trunk blocking measure demonstrates that its performance in this area is unacceptable, and that the Georgia remedy plan touted by BellSouth and the GPSC is not serving as a deterrent to non-compliant conduct.

III. BELLSOUTH'S PERFORMANCE REMEDY PLANS WILL NOT DETER ANTI-COMPETITIVE CONDUCT.

83. Both the LPSC and GPSC assert that BellSouth's Self-Executing Enforcement Plans will provide adequate incentives to assure that BellSouth will meet its statutory obligations after Section 271 entry. *See*, *e.g.*, LPSC at 52. The findings of the GPSC and LPSC[53] are flawed. As a preliminary matter, the comments confirm that the performance

[53] The LPSC states that BellSouth modified its Louisiana remedy plan proposal several times based on input from the LPSC Staff and CLECs. LPSC at 94. AT&T disagrees. BellSouth presented its remedy plans during workshops and did not seek feedback from the CLECs. BellSouth did not provide CLECs with detailed documentation specifying the details and contours of its proposals. Further, no CLEC supported the transaction-based plan that BellSouth proposed and that was eventually adopted. No CLEC supported the parameter delta values proposed by BellSouth. Each CLEC proposed that Tier II remedies should be assessed on a monthly basis; and BellSouth was the only party that held a different view. Although the LPSC states that the Louisiana remedy plan incorporated adjustments proposed by CLECs, the CLECs' concerns regarding the significant defects in the plans were not addressed.

measurements on which BellSouth relies — both as defined and as implemented — are inadequate to demonstrate full implementation of the checklist. Because BellSouth's performance measurements and data serve as the springboard for remedies payments, the inherent deficiencies in BellSouth's performance measures and data necessarily taint the efficacy of its performance remedy plans. For this reason alone, BellSouth's performance remedy plans are wholly inadequate to deter anticompetitive conduct.

84. The comments also confirm that BellSouth's remedy plans are deficient in other respects that preclude them from serving as effective deterrents against future backsliding, let alone as an inducement to initial compliance. Bursh/Norris Decl. ¶¶ 123-162.

85. First, the comments demonstrate that the monetary consequences to BellSouth under its remedy plans are insufficient to deter discrimination against CLECs. Bursh/Norris Decl. ¶¶ 124, 133. Second, the comments agree that the remedy plans omit key metrics that are essential to competitive entry. Bursh/Norris Decl. ¶¶ 148-158; WorldCom at 21, n. 17. Third, the comments confirm that the structural deficiencies in the plan, including its transaction-based approach, delta value, benchmark adjustment table, and statistical methodologies have the effect of shielding BellSouth from experiencing any significant financial consequences for specific performance deficiencies. WorldCom at 48-50; Bursh/Norris Decl. ¶ 148.

CONCLUSION

86. The deficiencies in the reliability of BellSouth's performance measurements and data, as well as the defects in its performance remedy plans, must be corrected now, before BellSouth receives inter LATA authorization under Section 271. The standards that this Commission has established for Section 271 compliance require no less, and

those standards are too important to protect local competition to permit any lowering of the compliance bar now.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on November __, 2001 ____

Sharon E. Norris